IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Bail Appl..No. 6520 of 2007

(CRIME NO. 688/2007 OF KASARAGODE POLICE STATION

PETITIONERS/ACCUSED NOS 1 TO 4 :

1. ABDUL NASSAR E.M., AGED 32 YEARS,
   S/O. MUHAMMED HAJI, RASEELA MANZIL,
   ERIYAL, POST KUDLU.

2. ABDUL SAMAD, S/O. MUHAMMED, AGED 24 YRS,
   EDACHERY, ERIYAL.

3. SAMEER E.M., S/O. MUHAMMED HAJI,
   RASEELA MANZIL, ERIYAL, POST KUDLU.

4. MUSTAFA, S/O. ABDULLA,
   ABIDA MANZIL, CHERANGAI.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS/STATE:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6520 of 2007

Dated this the 29th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under Sections 324 & 308 I.P.C r/w 149 I.P.C. 5 accused persons are named in the F.I.R. The petitioners are accused 1 to 4. They along with 3 others had allegedly constituted themselves into an unlawful assembly and had mounted an attack with weapons on the victims. The alleged incident took place on 16.10.07. This incident was allegedly a retaliation against an earlier incident which took place at a different venue. The accused persons had allegedly made necessary prior preparation and had gone to the place where the victim was available to mount an attack. A grievous injury is also suffered, it is urged. The crime has later been altered to one under Sections 326 and 306 r/w 149 I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. They may be granted anticipatory bail, it is prayed. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are well founded. The investigation so far reveals the complicity of the petitioner. Some of the accused persons have criminal antecedents also. In any view of the matter, this is not a fit case where the

discretion under Section 438 can or ought to be invoked in favour of the petitioners. This petition may, in these circumstances, dismissed, it is submitted.

3. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. Considering the nature of the allegations and the nature of the materials collected, I am persuaded to agree with the learned Public Prosecutor that this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-